

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Richard F. Wenstrom Jr. Confirmation No. 2466
Appln. No. : 10/708,467 Art Unit: 3733
Filed : March 5, 2004 Examiner: Mary C. Hoffman
Title : TUNNEL NOTCHER AND GUIDEWIRE DELIVERY DEVICE

I hereby certify that this correspondence is being transmitted via
The Patent Office electronic filing system in accordance with 37 CFR 1.6(a)(4)

June 22, 2010
(Date of Deposit)

Angelina Petti
(Name)

/Angelina Petti/
(Signature)

June 22, 2010
(Date of Signature)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR§ 1.127 and 1.181

Dear Sir:

Applicant hereby petitions to have the amendment submitted April 21, 2010 entered. The Examiner, in an advisory action mailed May 4, 2010 refused to enter the amendment on the grounds that “eliminating a claim element broadens the claims, and therefore, the claim would require further search and/or consideration. However, the claims were previously searched and considered without this element.

In response to a non-final Office Action mailed June 10, 2009, Applicant added the following language by amendment to claim 1, “and being spaced away from and not normal

to the elongate member.” In the final Office Action mailed February 22, 2010 the Examiner rejected the claim under 35 U.S.C. §112, first paragraph opining that the specification lacked sufficient enablement for the element “not normal to the elongate member.” While the merits of this rejection can be debated, Applicant elected to eliminate the element so as to reduce the number of issues for appeal. It was this amendment to remove the element that the Examiner has refused to enter. An Appendix attached hereto contains the different versions of the claims through amendment and the amendment which this petition seeks to have entered.

Given the assumption that the Examiner has previously performed her duties to search this claim without the element in preparation for the Office Action mailed June 10, 2009, its removal imposes no additional search burden upon the Examiner. The amendment also removes an issue for appeal. Accordingly, Applicant now requests the entry of the amendment.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/MIT5027USNP/ACF.

Respectfully submitted,

By: /Andrew C. Farmer/
Andrew C. Farmer
Reg. No. 35,868

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
(732) 524-2825
Dated: June 22, 2010

Appendix

Claim as Examined for the Office Action mailed June 10, 2009:

1. (Currently Amended) A tunnel notcher and guidewire delivery device, comprising:
an elongate member with proximal and distal ends and an inner lumen extending therebetween, the inner lumen being adapted to receive a guidewire; and
a cutting element having a distal bone cutting edge disposed proximal to a distal portion of the elongate member, the cutting element being adapted to remove bone within an opening of a bone tunnel, the cutting element being the only cutting element disposed on the elongate member and being substantially wedge-shaped and extending radially outward from the elongate member;
wherein the distal portion of the elongate member has a length greater than a length of the cutting element.

Claim as Amended in response to the Office Action mailed June 10, 2009.

1. (Currently Amended) A tunnel notcher and guidewire delivery device, comprising:
an elongate member with proximal and distal ends and an inner lumen extending therebetween, the inner lumen being adapted to receive a guidewire; and
a cutting element having a distal bone cutting edge disposed proximal to a distal portion of the elongate member, and being spaced away from and not normal to the elongate member, the cutting element being adapted to remove bone within an opening of a bone tunnel, the cutting element being the only cutting element disposed on the elongate member and being substantially wedge-shaped and extending radially outward from the elongate member;
~~wherein the distal portion of the elongate member has a length greater than a length of the cutting element.~~

Amendment submitted in response to the Final Office Action mailed February 22, 2010 and which this petition seeks to have entered:

1. (Currently Amended) A tunnel notcher and guidewire delivery device, comprising:
an elongate member with proximal and distal ends and an inner lumen extending therebetween, the inner lumen being adapted to receive a guidewire; and
a cutting element having a distal bone cutting edge disposed proximal to a distal portion of the elongate member, and being spaced away from ~~and not normal to~~ the elongate member, the cutting element being adapted to remove bone within an opening of a bone tunnel, the cutting element being the only cutting element disposed on the elongate member and being substantially wedge-shaped and extending radially outward from the elongate member.